

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be modified. Claimant should be, and is, awarded benefits for a 10 percent impairment.

Claimant alleges injury to her right upper extremity caused when she was stabbed by a coworker on April 7, 1998, and by repetitive use thereafter. Respondent has stipulated to the elements of compensability and that nature and extent of disability is now the only issue. The record contains impairment ratings by Dr. C. Reiff Brown, Dr. Murati, and Dr. Alander.

Claimant was initially treated by Dr. Brown and was released from his care September 24, 1998. Dr. Brown diagnosed partial laceration of the extensor tendon as well as the adjacent sheath and possibly the joint capsule. Dr. Brown rated the impairment as 3 percent of the right upper extremity. He restricted against hook and knife work and against frequent fist grasping of the right hand.

After the rating by Dr. Brown, claimant was seen by Dr. G. Garcia. Dr. Garcia diagnosed an incomplete tear of the extensor tendon with probable scarring and traumatic ganglion cyst of the 4<sup>th</sup> digit. On October 30, 1998, he performed surgery for extensor tendolysis and to remove the cyst.

On May 19, 1999, claimant saw Dr. Murati at the request of claimant's counsel. Dr. Murati recorded complaints of pain on the top of the right hand and in the arm and numbness in the finger. Dr. Murati diagnosed probable right carpal tunnel syndrome, probable right ulnar cubital syndrome, right rotator cuff strain, and generalized weakness. Dr. Murati rated the impairment as 20 percent of the right upper extremity based on the Fourth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*. The rating was based on loss of strength.

Because the parties did not agree on the extent of claimant's impairment, the ALJ appointed Dr. Alander to perform an independent examination. Dr. Alander rated the impairment as 4 percent of the right upper extremity for tenosynovitis. His letter report states the rating is based on the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition.

On appeal, claimant argues first that Dr. Brown's rating should be discounted because claimant received treatment, including surgery, after Dr. Brown last saw claimant. Claimant argues that Dr. Alander's rating should be disregarded because claimant was not working at the time she saw Dr. Alander. According to claimant, only Dr. Murati's rating is credible. Claimant was working at the time she saw Dr. Murati.

After reviewing the record, the Board agrees that the impairment rating should be increased but not to the extent claimant suggests. The Board agrees that Dr. Brown's rating was before claimant reached maximum medical improvement and therefore cannot be relied upon. Dr. Alander states a general conclusion that his rating is based on the *AMA Guides* but provides no explanation for how he arrived at the rating. His report was introduced but he was not deposed. He makes no reference to any specific provisions in the *Guides*. Dr. Murati attributes his rating specifically to the loss of strength. He notes that Dr. Alander also found a loss of strength. The two do not precisely agree on the extent of strength loss. The Board finds most reliable the strength loss noted in Dr. Alander's examination, a loss

of 25 percent. The record otherwise indicates that this strength loss would entitle claimant to a 10 percent impairment under the AMA *Guides*. The Board finds and concludes claimant is entitled to benefits based on a 10 percent impairment to the right upper extremity.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller on June 19, 2000, should be, and the same is hereby, modified.

**WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Maria Garcia, and against the respondent, Excel Corporation, and its insurance carrier, Crawford & Company, for an accidental injury which occurred April 7, 1998, and based upon an average weekly wage of \$486.95, for 21 weeks at the rate of \$324.65 per week, or \$6,817.65, for a 10% permanent partial disability to the right upper extremity, all of which is currently due and owing less amounts previously paid.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Chris A. Clements, Wichita, KS  
D. Shane Bangerter, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director